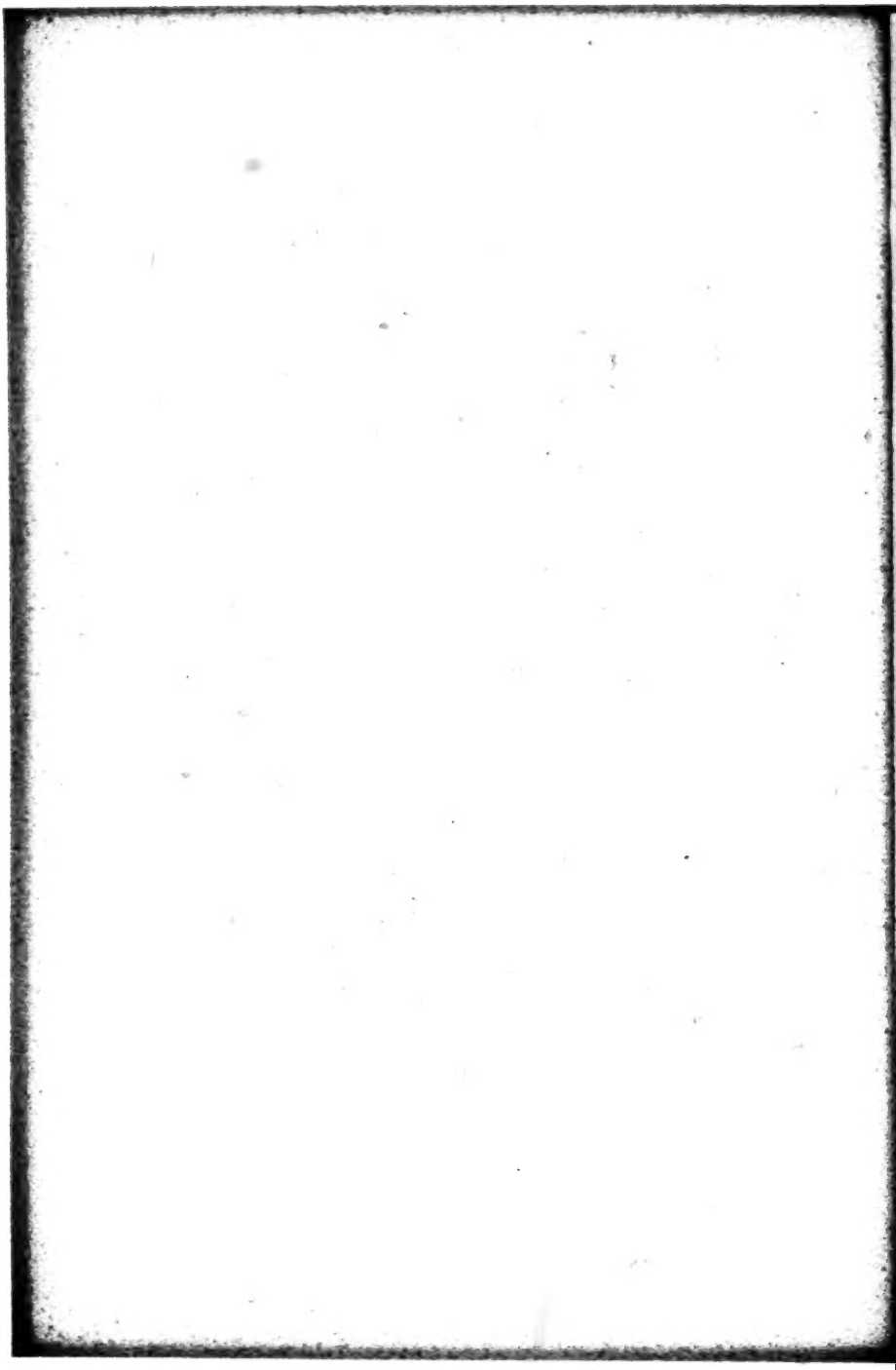

SUPREME COURT, U. S.
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MICHAEL RODAK, JR., CLERK

In The
Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-466

WILLIAM E. ARNOLD COMPANY, a Florida corporation

Petitioner,

v.

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, A LABOR ORGANIZATION, AND AS AN UNINCORPORATED ASSOCIATION, BY AND THROUGH JOHN H. SEA, BUSINESS REPRESENTATIVE THEREOF; AND CARPENTERS LOCAL UNION NO. 627, A LABOR ORGANIZATION, AND AS AN UNINCORPORATED ASSOCIATION, BY AND THROUGH EARL S. HUFF, ASSISTANT BUSINESS REPRESENTATIVE THEREOF,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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Jacksonville, Florida 32202
Attorneys for Respondents

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RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

STATEMENT OF THE CASE

Respondents would adopt and accept Petitioner's Statement of the Case insofar as it is supported by the record presented in the Appendix attached to the Petition.

REASONS FOR NOT GRANTING WRIT

The Respondent would respectfully submit that the Opinion of the Court Below did not decide a substantial federal question, and it was not in conflict with any decision of this Court.

A. THE OPINION IS NOT IN CONFLICT WITH THE NATIONAL LABOR POLICY AS SET FORTH IN *SMITH V. EVENING NEWS ASSOCIATION*, 371 U.S. 195 (1962).

Smith v. Evening News, supra, was not a suit for injunctive relief, as was the case at bar. It was a suit for damages under §301 of the Act. Petitioner argues that the Florida Supreme Court has foreclosed the Florida state courts from entertaining suits on collective bargaining contracts. This is not the case.

The Supreme Court of Florida narrowly held that (1) in a suit for injunction, (2) upon a collective bargaining contract, (3) where the activity sought to be enjoined is arguably an unfair labor practice, (4) the National Labor Relations Board should be given the first opportunity to act in the matter, and the state courts should defer action at least until the National Labor Relations Board decides.

The Supreme Court of Florida *did not* say the trial courts of this state did not have jurisdiction over cases of this type. Injunctive relief being the drastic relief that it is, this policy is actually more harmonious with a national labor policy. No longer can parties schedule a quick hearing in the state court, without notice, and obtain an injunction before the other party knows what is going on. Labor relations, unions, employers, and collective bargaining agreements have tradition-

ally been within the Federal curtilage. The Supreme Court of Florida has merely tried to formulate a procedural doctrine whereby Federal law will be more closely followed. The parties may apply to the National Labor Relations Board, or they may file suit in the Federal District Courts. As noted in *Boys Markets, Inc. v. Retail Clerk's Union, Local 770*, 90 S.Ct. 1583 (1970), there is a compelling incentive for defendants in these cases to obtain removal to the Federal Courts anyway, to obtain the advantage of the stricter Federal policy on injunctive relief adopted in *Boys Market*, supra.

Also as noted in *Boys Market*, at 90 S. Ct. 1591, NOTE at:

> "15. It is true that about one-half of the States have enacted so-called 'little Norris La Guardia Acts' that place various restrictions upon the granting of injunctions by state courts."

The Supreme Court of Florida has done essentially the same thing, by imposing judicial restrictions on the granting of state court injunctions. It has not, as indicated by petitioner, denied access to the state courts of Florida. Many suits will not involve unfair labor practices. Many will not be requesting injunctive relief.

Another point distinguishes this case from the theory and rationale enunciated in *Boys Market*, supra. Petitioners claim the no-strike promise on the part of the union is the quid pro quo for the grievance arbitration machinery, the binding-arbitration agreement.

The Court made a very narrow holding in *Boys Market*, supra. As stated by this Court at page 1594.

> "Our holding in the present case is a narrow one. *We*

> *do not undermine the vitality of the Norris La Guardia Act.* We deal only with the situation in which a collective bargaining contract contains a mandatory grievance adjustment or arbitration procedure. Nor does it follow from what we have said that injunctive relief is appropriate as a matter of course in every case of a strike over an arbitrable grievance." (Emphasis supplied)

In the case at bar, an injunction was issued with no provision directing the parties to arbitrate. Moreover, the particular contractual provision in question, quoted on page 4 of the Petition herein, says merely that "A mutually agreeable settlement, or joint decision of the international unions involved, or interpretation of the National Joint Board for Settlement of Jurisdictional Disputes (or Hearing Panel) shall be binding and all parties agree to accept such decision or interpretation." It is certainly unclear how that binds anyone to anything. What if the parties cannot agree which avenue to take? The problem would never be settled.

Thus there can be no finding from reading the words in the contract, that there is any mandatory grievance language contained within it at all. What would occur if none of the various avenues named as alternatives were agreed upon by the parties involved? There is obviously no solution provided by the language of the clause in question.

This Court has very definitely held in *Boys Market*, supra, that it does not *undermine the vitality of the Norris-La Guardia Act*. What meaning then is to be given to the decision in *Boys Market*? Presumably, precisely the meaning dictated by this Court -- that is, it encompasses a very narrow area of the law, and one into which this case does not fall. What meaning then is to be given to the Norris-LaGuardia Act?

Cannot some form of reservation be placed upon the courts of the various states prior to their issuance of injunctive relief?

Respondents would respectfully request that this Court refrain from exercising any jurisdiction in this cause for the reason that it does not adequately present federal questions necessitating resolution.

The Florida Supreme Court merely held to the tenet it fixed in *Scherer and Sons, Inc. v. International Garment Workers Union Local 415*, 142 So2d 290 (Fla. 1967). In that case the Court noted at 293:

> "It must be conceded, however, that where a given situation is 'arguably subject' to the prohibitions or protections of the Taft-Hartley Act, the federal government has pre-empted state action, *at least to the extent of conveying to the National Labor Relations Board the initial jurisdiction to determine the applicability of the federal law.* (Emphasis supplied)

B. THERE IS NO VIOLATION OF THE SUPREMACY CLAUSE OF THE CONSTITUTION OF THE UNITED STATES.

The Petitioner herein argues that the opinion of the Florida Supreme Court frustrates the national labor policy, and uniformity in substantive labor law between state and federal courts.

If anything, the opinion tries to assure uniformity in the substantive labor law. This case, of course, deals only with a procedural aspect in attempting to harmonize substantive law. It is submitted that the Florida Supreme Court was merely doing what this Court instructed it to do in *Nash v.*

Florida Industrial Commission, 389 U.S. 235, 88 S.Ct. 362, 19 L.Ed.2d 438, (1967), and that was to refrain from frustrating enforcement of the National Labor Relations Act.

This Court pointed out in that case:

> "The National Labor Relations Act, supra, is a comprehensive regulatory code passed by Congress to regulate Labor relations in activities affecting interstate and foreign commerce. As such it is of course the law of the land which no state law can modify or repeal."

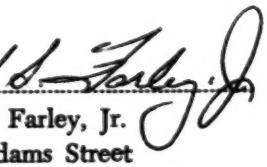
It is submitted that the most positive method that the State of Florida can employ to avoid interference with the National Labor Relations Act and the National Labor Relations Board, is to defer action in an injunctive action, where there are allegations of an unfair labor practice, at least until the National Relations Board determines jurisdiction.

CONCLUSION

Respondents respectfully submit that for the foregoing reasons, this Honorable Court should refrain from exercising jurisdiction in this cause, and the Petition for a Writ of Certiorari to the Supreme Court of Florida should be denied.

Respectfully submitted,

MAHON, FARLEY & VICKERS

By 
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Respondents' Brief in Opposition to Petition for a Writ of Certiorari to the Supreme Court of Florida has been furnished to J. P. Jones, Esquire, of Coffman & Jones, Post Office Box 40089, Jacksonville, Florida 32203, Attorneys for Petitioner, by Mail, this 25th day of October, A.D. 1973.

Attorney